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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,008	01/08/2004	Raghavan Charudattan	UF-289C2	7738
23557 7590 05/30/2008 SALIWANCHIK LLOYD & SALIWANCHIK A PROFESSIONAL ASSOCIATION PO BOX 142950 GAINESVILLE, FL 32614-2950				
EXAMINER				
BROOKS, KRISTIE LATRICE				
ART UNIT		PAPER NUMBER		
1616				
MAIL DATE		DELIVERY MODE		
05/30/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/755,008

Applicant(s)

CHARUDATTAN ET AL.

Examiner

Kristie L. Brooks

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-8 and 14-17 is/are rejected.
- 7) ☐ Claim(s) 4, 5, 7, 8, 13, 14, 16, 17, 20-23 and 28-32 is/are objected to.
- 8) ☒ Claim(s) 1-32 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of Claims

1. Claims 1-32 are pending.
2. Receipt and consideration of Applicants remarks/amendment filed on February 15, 2008 is acknowledged.

Withdrawn Rejections

3. The rejection of claims 1-20,23-29 and 32 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-10 of US Patent 6,689,718 is withdrawn in view of Applicant's filing of a terminal disclaimer on February 15, 2008.
4. The rejection of claims 1-3 and 9-12 under 35 U.S.C. 103(a) as being unpatentable over Petterson et al. (Tobacco mild mosaic virus (TMGMV) induces a lethal response in tropical soda apple (*Solanum viarum* Dunal), *Phytopathology*, June 2001, vol. 91, No. 6 supplement, pp.S71-72) is withdrawn in view of Applicants submission of a 1.132 declaration on February 15, 2008.
5. The rejection of claims 4-8 and 13-17 under 35 U.S.C. 103(a) as being unpatentable over Petterson et al. (Tobacco mild mosaic virus (TMGMV) induces a lethal response in tropical soda apple (*Solanum viarum* Dunal), *Phytopathology*, June 2001, vol. 91, No. 6 supplement, pp. S71-72)in view of Sanford et al (US 5,036,006),

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further in view of Zaitlin et al (US 5,596,132) is withdrawn in view of Applicants submission of a 1.132 declaration on February 15, 2008.

6. The rejection of claims 18-19 and 24-28 under 35 U.S.C. 103(a) as being unpatentable over Petterson et al. (Tobacco mild mosaic virus (TMGMV) induces a lethal response in tropical soda apple (*Solanum viarum* Dunal), *Phytopathology*, June 2001, vol. 91, No. 6 supplement, pp.S71-72) in view of Sanford et al (US 5,036,006), further in view of Johnson, Jr. et al. (US 6,060,430) is withdrawn in view of Applicants submission of a 1.132 declaration on February 15, 2008.

7. The rejection of claims 20 and 23 under 35 U.S.C. 103(a) as being unpatentable over Petterson et al. (Tobacco mild mosaic virus (TMGMV) induces a lethal response in tropical soda apple (*Solanum viarum* Dunal), *Phytopathology*, June 2001, vol. 91, No. 6 supplement, pp. S71-72), in view of Sanford et al (US 5,036,006), further in view of Burnside (4,223,479) is withdrawn in view of Applicants submission of a 1.132 declaration on February 15, 2008.

8. The rejection of claim 29 under 35 U.S.C. 103(a) as being unpatentable over Petterson et al. (Tobacco mild mosaic virus (TMGMV) induces a lethal response in tropical soda apple (*Solanum viarum* Dunal), *Phytopathology*, June 2001, vol. 91, No. 6 supplement, pp. S71-72), in view of Sanford et al (US 5,036,006), in view of Detweiler et

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al. (US 6,022,828) is withdrawn in view of Applicants submission of a 1.132 declaration on February 15, 2008.

Claim Objections

9. Claims 4-5, 7-8, 13-14, 16-17, 20-23, and 28-32 are objected to because of the following informalities: grammatical and typographical errors. Appropriate correction is required.

In claims 4-5, 13-14, the word ---the--- inserted before the word "Tobacco."

In claims 8, 17, 20-23 and 29-32, the phrase "tropical soda plants" should be corrected to ---tropical soda plant leaves---.

In claim 16, the word "issue" should be corrected to ---tissue---.

In claim 28, the word "provide" should be corrected to ---provided---.

In claims 21-23 and 30-32 the word ---said--- should be inserted between "wherein" and "injuring".

New Grounds of Rejection

Claim Rejections – 35 USC § 112

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 5-8, 14-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "host plant" in the claim. There is insufficient antecedent basis for this limitation in the claim because the claim depends from claim 4, which recites extracting Tobacco Mild Green Mosaic Virus from host plant tissue and not the host plant itself.

Claim 14 recites the limitation "host plant" in the claim. There is insufficient antecedent basis for this limitation in the claim because the claim depends from claim 13, which recites a extracting the Tobacco Mild Green Mosaic Virus from host plant tissue and not the host plant itself.

Conclusion

12. Claims 1-3, 9-12, 18-19, and 24-27 are allowed.
13. Claims 4-8, 13-17, 20-23 and 28-32 are not allowed.
14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristie L. Brooks whose telephone number is (571) 272-9072. The examiner can normally be reached on M-F 8:30am-6:00pm Est..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KB

/Johann R. Richter/
Supervisory Patent Examiner, Art Unit 1616